



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-044

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. It appears that the order makes no changes in some provisions of ch. NR 166 and only minor changes in some other provisions of the chapter. The plain language analysis states that no significant changes result from the revisions. Given that situation, why is the chapter repealed and recreated? Simply amending the affected provisions would result in a more clear and concise order. [For a discussion regarding the appropriate use of repealing and recreating, see s. 1.065, Manual.]

b. The plain language analysis should be expanded to provide general, summary descriptions of the substantive changes to the chapter that are not technical or insignificant. Examples of substantive changes that do not appear to be mentioned in the plain language analysis include the change in s. NR 166.05 (1) from a hearing requirement to a public comment requirement and the addition of new eligible project costs in s. NR 166.07 (1).

c. The repeal and recreation of a chapter or section may be accomplished in a single treatment clause. Thus, SECTION 1 and SECTION 2 should be merged. The treatment clause for the combined section should read “NR 166 is repealed and recreated to read:”. [s. 1.065, Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the rule summary, “Section 281.60 (12)” should be replaced with “Section 281.61 (12)”.

b. In s. NR 166.03 (23) (d), it appears that “(d)” should be replaced with “(c)”.

- c. In s. NR 166.03 (46), the second instance of “NR” should be omitted. [s. 1.07 (2), Manual.]
- d. In s. NR 166.06 (2) (m), “ch. NR 166” should be replaced with “this chapter”. [s. 1.07 (2), Manual.]
- e. In s. NR 166.07 (2) (y), “ss. NR 166.07 (1) (h) and (o)” should be replaced with “sub. (1) (h) and (o)”. [s. 1.07 (2), Manual.]
- f. In s. NR 166.12 (4) (a) (intro.), the “s.” before “40 CFR part 33” should be omitted. [s. 1.07 (3) (b), Manual.]
- g. In s. NR 166.13, references to s. 281.61 (11) (a) 1. and 2., Stats., should include periods following the “1” and “2”. [s. 1.07 (2), Manual.]
- h. In s. NR 166.17 (3) (c) 1. and 2., “subd.” should be omitted. [s. 1.07 (2), Manual.]
- i. In s. NR 166.23 (intro.), should “ss. (1) to (4)” be replaced with “subs. (1) to (4)”? [s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. Throughout the chapter, terms should be double-checked to ensure that defined terms are used consistently and that each of the terms defined in s. NR 166.03 appear elsewhere in the chapter. For example, s. NR 166.03 (39) defines “municipality”, but throughout the chapter, the phrase “local government unit” [defined in s. NR 166.03 (31)] often appears to be used instead of the term “municipality”. The phrase “municipal” appears throughout the chapter but does not appear to be defined. [If the definition of “municipal” is meant to be inferred from the definition of “municipality”, then the term arguably should not be used in conjunction with the term “local government unit”, since the two terms have different definitions.] As another example, see the term “publicly-owned water system” in s. NR 166.07 (1) (r) 2. Is that term intended to have a different meaning from the term “public water system”, which is defined in s. NR 166.03 (51)? Likewise, in s. NR 166.07 (3) (d), is the phrase “department approved project” intended to have a different meaning than the term “scored project”, which is defined in s. NR 166.03 (55)?
- b. Similarly, the use of various terms, whether or not they are defined, should be double-checked throughout the chapter for consistency. For example, the phrases “financial assistance,” “SDWLP assistance”, “SDWLP funding”, and “SDWLP financial assistance” appear to be used interchangeably throughout the chapter.
- c. Throughout the chapter, introductory material should follow the format in s. 1.03 (3), Manual. For example, in s. 166.03 (23) (intro.), “all of” or “any of” should be inserted before “the following”; and s. NR 166.23 (1) (intro.) and (a) (intro.) should end in colons and should form complete sentences when read with the subparts.
- d. Throughout the chapter, the agency should review its use of notes to ensure that notes do not contain substantive material. Substantive material should be included in the text of the rule, not in a note. [s. 1.09 (1), Manual.] For example, see s. NR 166.07 (1) (e) (Note).
- e. In s. NR 166.03 (32) (a) and (d), “1” should be replaced with “one”. [s. 1.01 (5), Manual.]

f. In s. NR 166.03 (55), consider revising the definition of “scored project” to ensure that the definition does not include substantive eligibility criteria.

g. In s. NR 166.03 (56), the word “whether” should be omitted from the definition of “service line”.

h. In s. NR 166.03 (59), the first letter of the word “Owner” should not be capitalized. [s. 1.01 (4), Manual.]

i. In s. NR 166.03 (65), the removal of the 51% requirement in the definition of “women business enterprise” arguably could have the effect of including some businesses for which men hold the majority ownership. Confirm that the change is intended.

j. Section NR 166.06 (1) (b) 1. could be reworded for greater clarity.

k. In s. NR 166.06 (2) (intro), would the department need to specifically identify ineligible costs in order to prorate eligible and ineligible portions of projects? If so, the language should be reworded to require specific identification and to also authorize the department to prorate the appropriate amount of financial assistance.

l. In s. NR 166.07 (1) (x), the title of the paragraph should follow the format in s. 1.05 (2) (d), Manual.

m. In s. NR 166.07 (2) (intro.), “, but are not limited to” should be omitted. [s. 1.01 (7) (d), Manual.]

n. Consider whether the conflict-of-interest provisions in s. NR 166.07 (2) (e) and (f) would be more appropriately included as a separate provision than within the list of ineligible costs.

o. In s. NR 166.07 (3) (e), it is not clear what is meant by the “principal amount” of interim financing.

p. In s. NR 166.10 (2) (b), replace “the” with “a” in the phrase “the permanent well”.

q. What is the distinction between the submission requirements in ss. NR 166.10 (2) and 166.11 (1)? Consider listing all of the submission requirements in one section, unless it is necessary to list them separately.

r. For greater clarity, consider revising s. NR 166.14 (1) (intro.) to read “shall require the recipient to do all of the following”.

s. In s. NR 166.23 (1) (b) 1. b., the meaning of the phrase “or long term 2 enhanced” is unclear.

t. In s. NR 166.23 (2), does it make sense to refer to a public water system as “hav[ing] a population”? Consider revising the provision to refer to the population served by a public water system.